IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO. 958 OF 2005

Shri.Lakhu Kanhiyalal Kukreja
and Anr. ..Petitioners

Vs.

Mr.Partab Pokardas Mulani ..Respondent

....

Ms.Sonia Bankapur Miskim with V.N.Tayade for Petitioners

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CORAM : B.H.MARLAPALLE,J.

DATE : APRIL 19,2005

P.C.:

1. Heard the learned counsel for the Petitioners who are the Defendants in Summary Suit No.2 of 2003 presently pending before the Court of Civil Judge S.D. at Kalyan. After filing the written statement, the Defendants submitted an application at Exh.25 seeking leave to defend the suit unconditionally under Order XXXVII Rule 5 of CPC and the said application came to be granted on deposit of amount of Rs.3 lakhs by the learned IInd Jt.Civil Judge S.D. at Kalyan by the impugned order dated 13.1.2005.

2. The main challenge to the said order is on the basis of limitation. It is contended that the suit was filed on 24.2.2003 and the first Bill/Promissory

Note was dated 4.9.1999 and therefore, the suit has not been instituted within a period of three years.

3. The Petitioner has placed on record along with Petition memo the particulars of claims at Exh.A and the Bills at Sr.Nos. 1 to 17 therein are prior to 23.2.2000. Whereas, the Bills from Sr.No. 18 to 40 are, prima facie, within a period of limitation of three years and if the amount claimed on the basis of these Bills from Sr.Nos. 18 to 40 is taken into consideration, it is in excess of Rs.3 lakhs. Hence, the discretion exercised by the trial Court in directing to deposit an amount of Rs.3 lakhs in the Court, cannot be termed as perverse or patently erroneous calling for interference under Article 227 of the Constitution of India. The learned Judge of the trial Court has applied his mind to the issue of limitation and passed an equitable order.

4. Hence, the petition fails at the threshold and the same is hereby rejected summarily.

[B.H.MARLAPALLE,J.]